BAIL SLIP

The Accused were directed to be released on bail by the order of this Court dated 24.12.1998 and made in Crl.M.P.No.11368/1998 in C.A.No.1120/98.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2006

CORAM:

THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

CRIMINAL APPEAL No.1120 OF 1998

1.Vasudevan
2.Tmt.Dhanam
3.M.Veerasami ... Appellants

Vs.

State, by
The Inspector of Police,
G-1 Vepery Police Station,
Chennai-600007 ... Respondent

* * *

Criminal Appeal preferred under Section 374 Cr.P.C. as against the judgment of conviction and sentence dated 16.12.1998 rendered in Sessions Case No.252 of 1997 by the learned IV Additional Sessions Judge, Chennai.

* * *

For appellants : Ms.Kothai for
M/s.P.Punniyakotti & L.Kishore

For respondent : Mr.J.C.Durairaj,
Govt.Advocate (crl.side)

* * *

JUDGMENT

The accused, in Sessions Case No.252 of 1997 on the file of the IV Additional Sessions Judge, Chennai, are the appellants.

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2. The respondent/police brought the accused/appellants before the trial Court to face the offence under Section 306 IPC on the ground that all of them have abeted the wife of the first accused to commit suicide on 25.1.1997 at about 10.30 a.m., preceding inflicting cruelty to the deceased and therefore, they should be dealt with under Section 306 IPC.

3. The learned IV Additional Sessions Judge, Chennai, satisfying himself to proceed further framing charge, framed charge under Section 306 IPC, questioned the accused, for which they refused to plead guilty, pleading that they are having defence, which resulted in a trial, where, on behalf of the prosecution, nine witnesses have been examined, seeking aid from 11 documents, which is sought to be nullified by the examination of D.W.1, a neighbour.

4. The learned trial Judge, while evaluating the above materials, came to the conclusion, unhesitatingly, that only at the instigation or abetment said to have been caused by the accused/appellants, the wife of the first accused had committed suicide, by self-immolation, pouring kerosene, setting ablaze. Thus taking the conclusion, he convicted all the accused for the offence under Section 306 IPC and sentenced each of them to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.100 each in default to undergo simple imprisonment for one week, which is under challenge in this appeal.

5. Heard Ms.Kothai, learned counsel for the appellants and Mr.J.C.Durairaj, learned Government Advocate (criminal side) for the respondent.

6. The first appellant is the son of the appellants 2 and 3. The first appellant's wife is one Sasikala. Admittedly, on 25.1.1997, at about 10.30 a.m., she committed suicide and despite the efforts taken by the husband, to rescue her, it ended in vain, though the first appellant/first accused also sustained burn injuries, admittedly. In their last attempt to save the deceased, they took her to the Doctor, who declared her dead. Thereafter, the neighbour of the accused preferred Ex.P.1 complaint, on which basis, originally a case came to be registered under Section 174 Cr.P.C., which was later converted to one under Section 306 IPC. The examination of the neighbours viz. P.Ws.1 and 2 as well as examination of the parents of the deceased P.Ws.3 and 4 and the brother of the deceased viz. P.W.5 by the Investigating Officer-P.W.9, including the examination of the Doctor-P.W.8, revealed that the deceased died only due to burn injuries, which is also supported by Ex.P.5-Post Mortem certificate,

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not under challenge. Therefore, we can conclude, unhesitatingly, that the wife of the first accused died due to burn injuries and the cause of death is due to self-immolation also. It is not the case of the prosecution that the accused/appellants have set ablaze her or it is also not the case of the prosecution that there was any stove burst or something like that, though the trial court tried to explain stove-burst, unnecessarily. Thus concluding, that the deceased met her end of life on her own, by self-immolation, we have to see whether any of the accused is responsible for committing suicide by the deceased.

7. It is the case of the prosecution that because of the abetment, said to have been committed by the accused, the deceased committed suicide. In this context, we have to see what are the ingredients required under Section 306 IPC. If a person(s) is (are) to be convicted under Section 306 IPC, the ingredients required to be proved are:

(i) that a person had committed suicide;

(ii) that for committing the suicide by the said person, there was abetment by others.

8. Section 107 IPC defines 'abetment', as follows:

"A person abets the doing of a thing, who
First – Instigates any person to do that thing; or
Secondly – engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing."

9. By going through the final report, as well as the charge framed against the accused, I am unable to find any specific instance, so as to say that by the acts of the accused, the deceased was compelled to take a decision to commit suicide. No case has been made out, as if either the husband or the in-laws had instigated the deceased to commit suicide, though there are accusations, as if these people were causing cruelty to the deceased, finding fault with the conduct of the deceased. Thus, the first ingredients required under Section 107 IPCare not only silent in this case but also absent.

10. Then coming to the second category of abetment, no conspiracy is pleaded or proved since the second category of abetment reads:

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'engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing'

Thus, the second category of abetment also vanishes.

11. Then comes the third category, 'intentionally aids, by any act or illegal omission, the doing of that thing'. The final report does not show how the accused have aided the deceased to commit suicide, by aiding intentionally either impliedly or directly, as the case may be. Therefore, a doubt arises as to whether there had been any intentional aid by any act or by illegal omission, as the case may be, by the accused/appellants. Thus, analysing Section 306 IPC, which should have the ingredients of Section 107 IPC, I am unable to find out any materials to fit-in the accused within the frame of the above two Sections.

12. Now, ignoring the absence of allegations at present, let me go into the evidence, to find, whether the parents evidence is sufficient in nature, to take an inference at least, that the accused should have aided intentionally or otherwise, compelling the deceased to commit suicide.

13. Ex.P.1 is the complaint, which set the law on motion, given by P.W.1, the neighbour. Though Ex.P.1 is not substantive evidence, as such, even there we are unable to see any averments connecting the accused, as if they should have abetted the deceased ,to commit suicide. In fact, the averments available in Ex.P.1 prompt me to think, there should not have been any abetment and if at all knowing the act committed by the deceased, the accused went to rescue her, thereby, in a way, eclipsing the abetment alleged. If really on the abetment said to have been committed by the accused, the deceased had committed suicide, then, these people should have kept quite elsewhere, closing their eyes to the incident. But, as seen from Ex.P.1, as spoken by P.W.1 also, all the accused attempted to put-off the fire and in that process, admittedly, accused 1 and 2 also sustained burn injuries, which is substantiated by the oral evidence given by the Doctor-P.W.7, who has been examined on the side of the prosecution.

14. P.W.1-neighbour, reiterating the averments made in Ex.P.1 has not stated anything regarding the instigation or inducement, whatever may be, to have the inference of abetment at least. P.W.2 being the neighbour, has not at all implicated A.1 and A.3, whereas

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he has stated, during the cross-examination that there used to be quarrel between mother-in-law and daughter-in-law, though he would depose in the examination-in-chief that Sasikala informed to him on 25.1.1997 at about 8.30 a.m., "as usual there was a quarrel". In the family, that too when they are living jointly, as alleged here, the quarrel is not unknown. Therefore, even assuming, as spoken to by P.W.2, there was some petty quarrel in the family, that alone cannot be taken, as if an abetment, unless there is something extra to say that the accused have aided the deceased to commit suicide or by their scolding and beating or inflicting cruelty, they have driven the deceased to take the extreme step of committing suicide. These materials, which are essential to bring the offence under Section 306 IPC are not available in the oral evidence of P.W.2.

15. P.Ws.3 and 4 are the parents of the deceased. I am not going to say, since they are parents of the deceased, their evidence should be rejected, affixing the seal of interestedness, since it is not the dictum of the law to say so. If they have spoken about the cruelty, which, if at all, should have prompted the deceased to take extreme step of committing suicide, then there is nothing wrong in relying on their evidence, to bring the accused within the frame of Section 306 IPC. This effort, myself going through the evidence, ends in vain, since these two witnesses not only contradict themselves, but also they have not implicated the parents-A.2 and A.3 directly, whereas they have given certificate to their son-in-law viz. the first accused, as if he was alright, though subsequently there was some change in his attitude.

16. P.W.3, though has stated that there was some quarrel between the husband and wife or between the family members of the husband and the deceased, he has not given any specific instance. He came to the spot or the village only after hearing the death news, as if there was a stove burst, which is not the case of the prosecution. In the cross-examination, P.W.3 attempted to introduce a new case, as if there was an attempt on the part of the first accused to get the signature of the deceased in white papers, probably to use the same for the second marriage, which is not the case of the prosecution. It is also not the case of P.W.3, during the examination-in-chief, that his daughter informed him that the first accused is compelling her to sign in any blank papers, with an intention to use the same for the proposed second marriage etc. Therefore, in this view, the oral evidence of P.W.3 also failed to advance the case of the prosecution to any extent and in this view, it is to be held, the evidence has not supported the prosecution case, to take the accused behind the bars.

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17. The mother of the deceased has given evidence, as if the dispute or the quarrel between the husband and wife was informed to her by grand-son, who has not been examined. In this view, the evidence of P.W.4 is inadmissible in nature, since it is hearsay. P.W.4 would further state, in the examination-in-chief, as if P.W.3 was informed by the deceased that there was a quarrel between husband and wife and because of the same, she was unable to come to the parents house, which is not the case, when P.W.3 was examined. In the cross-examination, P.W.4 admits, due to family dispute her daughter died, but, failed to say what is the 'family dispute', whether that dispute had given the cause of action for committing suicide, preceded by cruelty, whether directly or by inference or by implication etc. P.W.4 also certified that her son-in-law was very good, though he changed his attitude later, which appears to be an afterthought, since that is not the case of the prosecution also.

18. P.W.5 is the brother of the deceased. He has introduced a new case, as if his sister used to inform him that her in-laws used to beat her often, which is not even spoken to by P.Ws.3 and 4. Normally, if daughter was the victim at the hands of the husband or the in-laws, the complaint would be to the mother, giving preference to mother, than the brother. The mother has not stated anything about the beatings, said to have been inflicted by appellants 2 and 3 and in this view, I feel the case spoken to by P.W.5 is a development, which is not corroborated by anybody. Thus scanning the oral evidence of P.Ws.1 to 5, it is highly impossible to find out the ingredients required for Section 107 IPC, followed by Section 306 IPC. This being the position, convicting the accused/appellants for the suicide committed by the wife of the first appellant/first accused is hard, remote and beyond the scope of the law, since legal evidence available in this case is practically nil.

19. The investigation or the examination of the Doctor, if at all would disclose that the wife of the first accused/appellant had committed suicide and the death is not natural. For the reasons best known to the deceased, which the prosecution is unable to bring to surface, she had committed suicide. I, therefore, feel, it may not be proper and legal to convict the family members/the accused. Here, no dowry complaint is also reported, though there was some feeble attempt through one witness. Even for cruelty, which may lead to commit suicide, practically, there is no acceptable evidence, except the contradictory, uncorroborative oral testimony of P.Ws.3 to 5. The trial Court, unfortunately, not considering the evidence from proper perspective and without applying the correct provisions of law, in my considered opinion, erred in convicting the accused and sentencing them to undergo imprisonment, that too, when there is no legal evidence, for the reasons assigned by me supra.

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20. In the light of the above discussion, the appeal deserves acceptance and the same is accepted.

In the result, the appeal is allowed, setting aside the conviction and sentence passed against the accused/appellants by the learned IV Additional Sessions Judge, Chennai in Sessions Case No.252 of 1997, dated 16.12.1998. The appellants are found not guilty of the offence charged under Section 306 IPC and accordingly, they are acquitted. The fine amount, if any paid by the appellants shall be refunded to them. The bail bonds of the appellants shall stand discharged.

Rao

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Registrar,
City Civil Court, Chennai.

2.The IV Additional Sessions Judge, Chennai.

3.-do- Through The Principal Judge, Chennai.

4.The Inspector of Police,
G-1 Vepery Police Station,
Chennai-600007.

5.The Public Prosecutor,
High Court,
Madras.

akm (co)

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